

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LEO L. DURAN,

Plaintiff,

v.

No. 09-cv-0758 MCA/SMV

CURRY CNTY. ADULT DET. CTR. et al.,

Defendants.

**ORDER DENYING DEFENDANT CURTIS' MOTION FOR DEFAULT JUDGMENT
AND DIRECTING CLERK TO MAIL CERTAIN DOCUMENTS**

THIS MATTER is before the Court on Defendant Tamara R. Curtis' Motion for Default Judgment . . . [Doc. 244], filed September 12, 2013. Defendant Curtis argues that she is entitled to default judgment because Plaintiff has not responded to her Motion for Judgment on the Pleadings . . . [Doc. 231], which was filed on June 11, 2013. Plaintiff responds that he never received the Motion for Judgment on the Pleadings and therefore should be excused from default and given an opportunity to respond to the Motion for Judgment on the Pleadings. [Doc. 249] at 3.

The Court agrees with Plaintiff. Plaintiff is entitled to an opportunity to respond and will have 30 days from the date of this Order to do so.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED Defendant Tamara R. Curtis' Motion for Default Judgment [Doc. 244] is **DENIED**.¹

¹ A magistrate judge has authority under 28 U.S.C. § 636(b)(1) to decide non-dispositive matters. In this instance, the denial of a request for default judgment is non-dispositive. *See Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1519 (10th Cir. 1995).

IT IS FURTHER ORDERED that the Clerk of the Court shall mail Defendant Tamara R. Curtis' Motion for Judgment on the Pleadings [Doc. 231] and Memorandum in Support [Doc. 232], along with a copy of this Order, to Plaintiff.

IT IS FURTHER ORDERED that Plaintiff file his response to the Motion for Judgment on the Pleadings [Doc. 231] no later than **November 18, 2013**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge